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The PSC regime - changes to apply from 26 June 2017

On 19 April 2017, Companies House issued a press release outlining important changes to the PSC regime resulting from the UK's implementation of the Fourth Anti-Money Laundering Directive (EU 2015/849).

Since 6 April 2016, unlisted UK companies and LLPs have been required to identify individuals who have significant interests in their shares and to publicly disclose their details in a separate company register (the "**PSC Register**"). Please click [here](#) for our previous client briefing on the current UK PSC regime. Some important changes to the current regime are expected to come into force next month on the UK's implementation of the Fourth Anti-Money Laundering Directive (EU 2015/849) ("**MLD4**"), as outlined in this briefing.

What is the relationship between MLD4 and the UK PSC regime?

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "**Regulations**") will implement much of MLD4 into UK law as from 26 June 2017. A previous client briefing outlining the broader changes expected to the existing anti-money laundering regime on implementation of MLD4 into UK law can be accessed [here](#). One aspect of MLD4 not implemented by the Regulations is the requirement for EU member states to maintain a central register of beneficial ownership information of corporate and other legal entities in their territory. The UK already has a requirement for companies and LLPs to maintain a publicly available register of persons with significant control (the "**PSC Register**") and to file details with Companies House, but there are some differences between the requirements of MLD4 and our current PSC regime. Additional legislation will be required to conform the PSC regime to MLD4.

What changes are expected to the existing PSC regime in the UK?

In November 2016, the Department for Business, Energy and Industrial Strategy ("**BEIS**") launched a [consultation](#) proposing possible ways to amend the current PSC regime to meet the UK's transposition obligations under Article 30 of MLD4 (the "**BEIS Consultation**"). More recently, on 19 April 2017, Companies House issued a press release covering changes to the PSC regime, [Changes to UK anti-laundering measures](#), together with its [Strategic Plan 2017-2020](#) and [Business Plan 2017-2018](#) (the "**CH Announcement**"). Some of the changes outlined in the CH Announcement are consistent with proposals set out in the BEIS Consultation, but others are more extensive.

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Draft legislation for the implementation of such changes will not be published until June and therefore the extent of the changes remains somewhat uncertain. However, it is anticipated that the changes will largely reflect the position set out in the table below (which is based on the CH Announcement).

Changes to the PSC regime	
Position under current PSC regime	Expected position from 26 June 2017
<ul style="list-style-type: none">● PSC information is updated or confirmed in the annual Confirmation Statement (CS01) unless an entity has elected to keep its PSC information on the central register.● Forms PS01 to PS09 used only by entities that have elected to keep PSC information on the central register.● Scottish limited partnerships and Scottish general partnerships not caught by regime (<i>BEIS acknowledged that this falls short of MLD4 requirements</i>).● Companies subject to disclosure requirements under chapter 5 of the DTRs are exempt from the PSC regime.● A PSC can apply for a restriction so that information isn't disclosed on the public register in certain limited circumstances (as detailed in our previous PSC client briefing) but such secured information may be disclosed to specified public authorities and credit reference agencies.	<ul style="list-style-type: none">● A duty to update the PSC register within 14 days of any change, and to notify Companies House of such change within another 14 days (<i>this differs from the BEIS Consultation proposal for updates to be required every 6 months</i>).● Forms PS01 to PS09 to be used to update the PSC information in accordance with the above.● Active Scottish limited partnerships and Scottish general partnerships where all the partners are corporate bodies to fall within scope of PSC regime.● Potential removal of the exemption for non-listed DTR5 issuers (including AIM companies).● Disclosure of secured information under the protection regime to be extended to credit and financial institutions, where appropriate.

How will these changes impact you?

- **Filing requirements:** under the current regime, unless an entity has elected to keep its PSC information on the central register, updates to PSC information are only required to be filed annually as part of the annual Confirmation Statement (CS01). The new requirement to register changes with Companies House within 28 days is a significant move away from the current annual filing requirement and will clearly result in an additional administrative burden. However, as the current regime already requires entities to keep an up to date register available for inspection at their registered office, the additional burden should only go to the filing of information as opposed to the collation of up to date PSC information.
- **Non-listed DTR5 issuers (including AIM companies):** there has been some criticism of the suggestion that non-listed DTR5 issuers (such as AIM companies) will be subject to the PSC regime. The Law Society is of the view that it is anomalous that UK companies who are listed on prescribed markets will be caught by the regime on the basis that they are already subject to disclosure requirements that are consistent with EU law. Be that as it may, the CH Announcement states that, from 26 June 2017, the exemptions applying to non-listed DTR5 issuers under the existing PSC regime will change and such entities may need to provide PSC information. The extent of this change will not be known until the relevant legislation is available, but for the time being our advice to non-listed DTR5 issuers is to familiarise themselves with the general requirements of the PSC regime (as summarised in our initial PSC briefing referred to above) and to collate the relevant PSC information. Those issuers should also consider the protective regime and prepare to make any necessary applications for exclusion from the public register.
- **Scottish LPs and GPs:** similarly, to the extent that there are any active Scottish limited partnerships or Scottish general partnerships in your group structures where all partners are corporate bodies, steps should be taken to ensure that they will be in a position to comply with the PSC regime requirements as of 26 June 2017. Again, we will not know the precise details of the requirements as they will apply to such entities until the relevant legislation is made available to the public.

Legislation, guidance and timing

As noted above, legislation bringing these changes into force has not yet been published. The above is based only on the content of the CH Announcement and there could be some variance when the changes required by MLD4 actually come into force.

Companies House has acknowledged that, for some entities in particular, the PSC legal framework can appear complex and that additional steps need to be taken in the coming year to improve overall compliance. These steps are outlined in the Strategic Plan and Business Plan referred to above and, of particular note, will include a review of the existing guidance to ensure it is providing the necessary support.

The changes to the PSC regime will come into force on **26 June 2017** when MLD4 is implemented into UK law.

Register of beneficial owners of overseas companies and other legal entities

Separate to the anticipated changes to the PSC regime, BEIS published on 5 April 2017 its [call for evidence](#) on a proposed new register to enhance the transparency of beneficial ownership information in relation to overseas investment in property and public contracts in the UK (the "**OEBO Register**"). The OEBO Register, which is seen as an anti-corruption measure, would show who owns and controls overseas legal entities that own UK property or participate in UK public procurement.

The Government proposes to apply rules similar to those under the PSC regime as regards how to identify beneficial owners, what reasonable steps an entity should take to do so and the required particulars that must appear on the publicly available register. Criminal sanctions will apply in respect of a number of failures to comply with the new regime.

OEBO Register – Key Proposals

- All overseas legal entities capable of holding UK property or bidding on UK central government procurement contracts will be subject to the regime if they do so. (The regime will be voluntary in respect of procurement contracts with wider public sector bodies such as Local Authorities.)
- Overseas entities that own or wish to acquire UK property must supply beneficial ownership information to Companies House and apply for a registration number (overseas entities that already own UK property will have 12 months to comply and obtain a registration number). This will apply in respect of freehold title and also in respect of leases that require registration and for which the initial term is at least 21 years.
- Where the overseas owner is not fully compliant, a restriction will appear on the title register, prohibiting it from selling the property or creating a long lease or legal charge over it.
- The new regime will operate in a similar way in relation to procurement. An overseas entity wishing to enter into a central government procurement contract will have to provide information on beneficial ownership before such contract can be finalised. However, the regime will not apply to public contracts already procured or where procurement procedures have already started.
- Information on the overseas register should be updated at least every two years (with an option to update information sooner).
- A protection regime will apply similar to the PSC protection regime, but as the overseas register will relate to individual properties, there is an acknowledgment that risk of harm to an individual may be increased by that person's association with the property being known. Therefore, a more extensive protection regime is expected than that applicable under the PSC regime.
- It should still be possible for lenders to enforce security over property, even where there is a restriction in place due to breach of the regime's requirements.

The details of the regime are some way from being finalised. It is likely that there will be some overlap with the PSC regime, but BEIS has helpfully noted that there will be an attempt to avoid double registration.

Travers Smith

TRIVERS SMITH

FOR FURTHER INFORMATION, PLEASE CONTACT YOUR USUAL CONTACT AT THE FIRM OR ALTERNATIVELY CONTACT:

10 Snow Hill
London EC1A 2AL
T: +44 (0)20 7295 3000
F: +44 (0)20 7295 3500
www.traverssmith.com



Carys Clipper

Professional Support Lawyer

E: carys.clipper@traverssmith.com
T: +44 (0)20 7295 3480



Jane Bondoux

Professional Support Lawyer

E: jane.bondoux@traverssmith.com
T: +44 (0)20 7295 3355